

MONTANA LEGISLATIVE HISTORY

Chapter 261 19 91

Bill H 812 S _____ Original bill & history ✓ C

H. Committee on Labor + Employment Relations S. Committee on Labor + Employment Relations

Hearing Date(s) Feb 21 ✓ C

Hearing Date(s) Mar 14 ✓ C

_____ C

_____ C

_____ C

_____ C

_____ C

_____ C

Date Out Feb 22 ✓ C

Mar 14 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

2/19 TABLED IN COMMITTEE

HB 809 INTRODUCED BY PETERSON, ET AL.

INCREASE FIRE INSURANCE PREMIUM TAX TO
FUND FIRE PREVENTION & INVESTIGATION
BY REQUEST OF DEPARTMENT OF JUSTICE

2/13	INTRODUCED		
2/13	REFERRED TO TAXATION		
2/13	FIRST READING		
2/13	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE RECEIVED		
2/19	FISCAL NOTE PRINTED		
3/12	HEARING		
3/22	TABLED IN COMMITTEE		
3/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/04	2ND READING PASSED	54	39
4/04	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/04	3RD READING PASSED	54	43
	TRANSMITTED TO SENATE		
4/05	FIRST READING		
4/05	REFERRED TO TAXATION		
4/11	HEARING		
4/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/16	2ND READING CONCURRED	49	0
4/17	3RD READING CONCURRED	45	4
	RETURNED TO HOUSE WITH AMENDMENTS		
4/18	2ND READING AMENDMENTS CONCURRED	80	17
4/19	3RD READING AMENDMENTS CONCURRED	61	37
4/23	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/23	TRANSMITTED TO GOVERNOR		
4/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 703		

EFFECTIVE DATE: 7/01/91

HB 810 INTRODUCED BY SWYSGOOD, ET AL.

LIMITING LIABILITY OF LANDOWNERS
TO FIREWOOD GATHERERS

2/13 INTRODUCED
2/13 REFERRED TO JUDICIARY
2/13 FIRST READING
2/22 HEARING
2/22 TABLED IN COMMITTEE

HB 811 INTRODUCED BY MENAHAN

AMEND PROVISIONS ON WHO MAY SELL
ANTIQUE SLOT MACHINES

2/13 INTRODUCED
2/13 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
2/13 FIRST READING
2/13 FISCAL NOTE REQUESTED
2/18 FISCAL NOTE RECEIVED
2/20 FISCAL NOTE PRINTED
2/22 HEARING
2/22 TABLED IN COMMITTEE

HB 812 INTRODUCED BY WANZENRIED, ET AL.

INCLUDE CERTAIN EMPLOYEE EXPENSE REIMBURSEMENTS
IN THE EXCLUSION FROM WAGES FOR WORKERS'
COMPENSATION AND UNEMPLOYMENT COMPENSATION PURPOSES

HOUSE FINAL STATUS

HB 814

2/13	INTRODUCED		
2/13	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/13	FIRST READING		
2/21	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED		
2/22	PLACED ON CONSENT CALENDAR		
2/26	3RD READING PASSED	96	3
	TRANSMITTED TO SENATE		
2/26	FIRST READING		
2/26	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	49	0
3/18	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/23	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 261		
	EFFECTIVE DATE: 10/01/91		

HB 813 INTRODUCED BY O'KEEFE, ET AL.

ESTABLISH COUNTY RECORDS PRESERVATION FUND

2/13	INTRODUCED		
2/13	REFERRED TO LOCAL GOVERNMENT		
2/13	FIRST READING		
2/13	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
3/05	HEARING		
3/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/11	2ND READING PASSED	80	19
3/14	3RD READING PASSED	89	11
	TRANSMITTED TO SENATE		
3/15	FIRST READING		
3/15	REFERRED TO LOCAL GOVERNMENT		
3/21	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	42	5
3/25	3RD READING CONCURRED	34	14
	RETURNED TO HOUSE		
4/01	SIGNED BY SPEAKER		
4/01	SIGNED BY PRESIDENT		
4/01	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 355		
	EFFECTIVE DATE: 7/01/91		

HB 814 INTRODUCED BY THOFT, ET AL.

PROVIDE FOR STATE-OWNED WATER PROJECT DISPOSITION
BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

2/13	INTRODUCED		
2/13	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
2/13	FIRST READING		
2/13	FISCAL NOTE REQUESTED		
2/18	FISCAL NOTE RECEIVED		
2/20	HEARING		
2/21	FISCAL NOTE PRINTED		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/13	2ND READING PASSED AS AMENDED	83	15
3/15	3RD READING PASSED	90	8

HOUSE BILL NO. 812

INTRODUCED BY WANZENRIED, HARP, DRISCOLL, WILLIAMS

IN THE HOUSE

FEBRUARY 13, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

FEBRUARY 22, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

POSTED ON CONSENT CALENDAR.

FEBRUARY 23, 1991 CONSENT CALENDAR, QUESTIONS AND ANSWERS.

ENGROSSING REPORT.

FEBRUARY 26, 1991 THIRD READING, PASSED.
AYES, 96; NOES, 3.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

MARCH 15, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 16, 1991 SECOND READING, CONCURRED IN.

MARCH 18, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 19, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 812
 2 INTRODUCED BY UNZENRIED HARP
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE CERTAIN
 5 EMPLOYEE EXPENSE REIMBURSEMENTS IN THE EXCLUSION FROM WAGES
 6 FOR WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION
 7 PURPOSES; AND AMENDING SECTIONS 39-51-201 AND 39-71-123,
 8 MCA."
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 39-51-201, MCA, is amended to read:

12 "39-51-201. General definitions. As used in this
 13 chapter, unless the context clearly requires otherwise, the
 14 following definitions apply:

15 (1) "Annual payroll" means the total amount of wages
 16 paid by an employer, regardless of the time of payment, for
 17 employment during a calendar year.

18 (2) "Base period" means the first four of the last five
 19 completed calendar quarters immediately preceding the first
 20 day of an individual's benefit year. However, in the case of
 21 a combined-wage claim pursuant to the arrangement approved
 22 by the secretary of labor of the United States, the base
 23 period shall be that applicable under the unemployment law
 24 of the paying state. For an individual who fails to meet the
 25 qualifications of 39-51-2105 or a similar statute of another

1 state due to a temporary total disability as defined in
 2 39-71-116 or a similar statute of another state or the
 3 United States, the base period means the first four quarters
 4 of the last five quarters preceding the disability if a
 5 claim for unemployment benefits is filed within 24 months of
 6 the date on which the individual's disability was incurred.

7 (3) "Benefits" means the money payments payable to an
 8 individual, as provided in this chapter, with respect to the
 9 individual's unemployment.

10 (4) "Benefit year", with respect to any individual,
 11 means the 52-consecutive-week period beginning with the
 12 first day of the calendar week in which such individual
 13 files a valid claim for benefits, except that the benefit
 14 year shall be 53 weeks if filing a new valid claim would
 15 result in overlapping any quarter of the base year of a
 16 previously filed new claim. A subsequent benefit year may
 17 not be established until the expiration of the current
 18 benefit year. However, in the case of a combined-wage claim
 19 pursuant to the arrangement approved by the secretary of
 20 labor of the United States, the base period is the period
 21 applicable under the unemployment law of the paying state.

22 (5) "Board" means the board of labor appeals provided
 23 for in Title 2, chapter 15, part 17.

24 (6) "Calendar quarter" means the period of 3
 25 consecutive calendar months ending on March 31, June 30,

September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit

or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control

1 or direction over the performance of the services, both
2 under his contract and in fact; and

3 (b) is engaged in an independently established trade,
4 occupation, profession, or business.

5 (15) (a) "Institution of higher education", for the
6 purposes of this part, means an educational institution
7 which:

8 (i) admits as regular students only individuals having
9 a certificate of graduation from a high school or the
10 recognized equivalent of such a certificate;

11 (ii) is legally authorized in this state to provide a
12 program of education beyond high school;

13 (iii) provides an educational program for which it
14 awards a bachelor's or higher degree or provides a program
15 which is acceptable for full credit toward such a degree, a
16 program of postgraduate or postdoctoral studies, or a
17 program of training to prepare students for gainful
18 employment in a recognized occupation; and

19 (iv) is a public or other nonprofit institution.

20 (b) Notwithstanding any of the foregoing provisions of
21 this subsection, all colleges and universities in this state
22 are institutions of higher education for purposes of this
23 part.

24 (16) "State" includes, in addition to the states of the
25 United States of America, the District of Columbia, Puerto

1 Rico, the Virgin Islands, and the Dominion of Canada.

2 (17) "Unemployment insurance administration fund" means
3 the unemployment insurance administration fund established
4 by this chapter from which administrative expenses under
5 this chapter shall be paid.

6 (18) (a) "Wages" means all remuneration payable for
7 personal services, including commissions and bonuses, the
8 cash value of all remuneration payable in any medium other
9 than cash, and backpay received pursuant to a dispute
10 related to employment. The reasonable cash value of
11 remuneration payable in any medium other than cash shall be
12 estimated and determined in accordance with rules prescribed
13 by the department.

14 (b) The term "wages" does not include:

15 (i) the amount of any payment made by the employer, if
16 the payment was made under a plan established for the
17 employees in general or for a specific class or classes of
18 employees, to or on behalf of the employee for:

19 (A) retirement;

20 (B) sickness or accident disability, but in the case of
21 payments made by an employer directly to an employee, only
22 those payments made under a workers' compensation law are
23 excluded from "wages";

24 (C) medical and hospitalization expenses in connection
25 with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare officer; or

(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(20) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an

incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee ~~travel~~ expense reimbursements or allowances for meals, lodging, travel, ~~and~~ subsistence, ~~and~~ other expenses, as set forth in department rules

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

1 (4) (a) For the purpose of calculating compensation
2 benefits for an employee working concurrent employments, the
3 average actual wages must be calculated as provided in
4 subsection (3).

5 (b) The compensation benefits for a covered volunteer
6 must be based on the average actual wages in his regular
7 employment, except self-employment as a sole proprietor or
8 partner who elected not to be covered, from which he is
9 disabled by the injury incurred.

10 (c) The compensation benefits for an employee working
11 at two or more concurrent remunerated employments must be
12 based on the aggregate of average actual wages of all
13 employments, except self-employment as a sole proprietor or
14 partner who elected not to be covered, from which the
15 employee is disabled by the injury incurred."

-End-

REP. BENEDICT asked Mr. Chisholm what will happen to the less fortunate people who don't have the money. Mr. Chisholm said the proposal is to contract with free-standing programs under a better care approach, and they may be more geographically accessible.

REP. SQUIRES asked Mr. Chisholm if he could insure that the indigent people will not be screened out. Mr. Chisholm said the intent is that those people will not be screened out; it would be an open-door basis.

Closing by Sponsor:

REP. DEBRUYCKER said the state law mandates that before a department can move, discontinue, or abandon an institution, it must first seek the consent of the Legislature. The Department of Institutions is seeking that consent through HB 961. State law requires the Department to provide care and treatment to patients suffering from mental disorder and treatment that is suited to the needs of each person in the least restrictive environment if possible or in the institution setting where less restrictive alternatives are not available. That is what the Department intends to do with the transfer of the nursing-care patients from Galen to Warm Springs, the Center for the Aged, and the private nursing homes. The acute-care hospital is under utilized, and the services can be provided through contracts with local hospitals. The chemical dependency service can be provided through contracts with local state-approved programs. The goal is to provide more appropriate care to more people closer to home.

EXECUTIVE ACTION ON HB 961

Motion/Vote: REP. PAVLOVICH MOVED HB 961 BE TABLED. Motion carried 12 to 6 with Reps. Benedict, Thomas, Lee, Hanson, Johnson, and Fagg voting no.

HEARING ON HB 812

Presentation and Opening Statement by Sponsor:

REP. WANZENRIED, House District 7, Kalispell, said HB 812 clarifies what is and what is not included in wages subject to the UI tax and the Workers' Compensation premium. Currently, the laws are ambiguous and inconsistent. There is no legislative direction about the definition of Workers' Compensation. The mutual compensation fund is operating on a policy, not a statute, governing what portion of an employer's payroll is subject to the tax. There are two problems in two particular industry categories. HB 812 was drafted narrowly to include the trucking and logging industries. There are standards within the industry to determine what is and what is not subject to the tax for the per diem allowance for over-the-road expenses in the trucking industry and "saw rent" in the logging industry. In UI laws, it

is not clear what is and what is not regarded as per diem. If the bill is enacted, there would be common definitions in both areas for Workers' Compensation and UI making it clear that there would be a parallel system to the greatest extent possible to determine what is subject to tax in both areas and what is not.

Proponents' Testimony:

Ben Havdahl, Montana Motor Carriers Association, presented written testimony. EXHIBIT 29

Keith Olson, Executive Director, Montana Logging Association, presented written testimony. EXHIBIT 30

Bob Mullen, Deputy Director, Department of Labor and Industry, said Workers' Compensation and UI are funded through payroll taxes paid by employers. The amount of tax paid by an employer is generally assessed as a percentage of the wages. The definition of wages for UI is similar but not identical to the definition of wages for Workers' Compensation. The definitions of what are not wages are not identical either. As a result, some wages and payments to workers are reportable to the UI system but not to the Workers' Compensation and vice versa. Employers have to deal with two standards and are confused. This bill would allow the Department of Labor to write specific rules regarding what payments made by an employer are not to be considered wages for UI and Workers' Compensation. It would be the Department's intention to write rules consistent between the two programs to eliminate further confusion.

John King, State Compensation Insurance Fund, stated his support.

Don Judge, AFL-CIO, said the rules that are adopted should be the same the rules currently in the law for UI. Other expenses shouldn't include tip credits or other items that might be considered an expense of the employer but not an expense to the employee.

Opponents' Testimony: None

Questions From Committee Members:

REP. DRISCOLL said the rules between the UI Division and the State Fund on travel expenses are inconsistent. He asked Mr. Mullen if the bill passed would it guarantee that the rules for Workers' Compensation and UI will be consistent pertaining to travel and reimbursement. Mr. Mullen said occasionally items can't be made consistent between UI and Workers' Compensation. On some items, the Federal UI Act does not allow the Department to withhold in regard to wages. REP. DRISCOLL said Workers' Compensation said that a premium wasn't owed on travel pay, as long as it wasn't tied to the hourly wage. UI says that the state rate can't be exceeded unless there is a motel receipt, and only \$24.50 can be deducted per day. In a particular

construction case, it was \$30 per day for the motel. No matter how many hours were worked, it wasn't tied to hours. Workers' Compensation said a premium wasn't owed on that \$30. UI said a premium was owed above \$24.50 which tied it back to the state rate. That is inconsistent. Why is it tied to the state rate?

Mr. Mullen said the Department would like to create some consistency between the way the two Funds are operated. HB 807 had some coordinating language to have the two divisions within the Department trade lists and try to insure that they are treated the same way within the Department. REP. DRISCOLL said in previous testimony, Mr. Judge asked that rules be the same as they are now. Will that rule be changed no matter what the number is, so it will be made the same under UI and Workers' Compensation? Mr. Mullen said yes; the Department will try to make the rules consistent.

Closing by Sponsor:

REP. WANZENRIED closed the hearing on HB 812.

EXECUTIVE ACTION ON HB 812

Motion/Vote: REP. JOHNSON MOVED HB 812 DO PASS. Motion carried unanimously.

Motion/Vote: REP. SOUTH MOVED HB 812 BE PLACED ON CONSENT CALENDAR. Motion carried unanimously.

HEARING ON HB 712

Presentation and Opening Statement by Sponsor:

REP. CAROLYN SQUIRES, House District 58, Missoula, said HB 712 requires the employers to buy safety equipment necessary to provide a safe environment for employees. The employees must respond by using the equipment provided. The bill mandates the employee wear the equipment provided for safety in the workplace. She proposed amendments. "Footwear" was removed from the bill, and those people, who have negotiated a contract dealing with the purchase of safety equipment, are to be excluded.

Proponents' Testimony:

Dan Edwards, Oil, Chemical, and Atomic Workers' Union, stated his support.

Bob Heiser, United Food and Commercial Workers' Union, said safety equipment reduces injuries.

George Wood, Executive Secretary, Montana Self Insurers Association, stated his support with the exclusion of "footwear" and changing the "or" to "and" on Page 1, Line 24.

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2/21/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

February 21, 1991
HB 812
Ben Havdahl, MT Motor Carriers Assn.

Madam Chairman.....members of the committee. For the record, my name is Ben Havdahl and I am representing the Montana Motor Carriers Association. MMCA supports HB 812.

The modification, as proposed in HB 812, of the definition of wages in the Unemployment Compensation Insurance statute and the Workers Compensation Insurance statute will be helpful to motor carriers so that the basis for the calculation of premiums for both UCI and WCI insurance will be consistent and uniform.

Expenses paid to ^{truck}drivers for traveling around the country have been handled differently by these agencies in calculating premiums. On one hand certain travel expenses paid to drivers are considered wages and included in the calculation of the premiums for UCI. On the other hand those same expenses are not included as wages for WCI premiums. This has led to confusion and problems when carriers are audited by a common auditor for both agencies.

The matter has been tried in the courts and heard by the Supreme Court. In the cases the courts have pointed to the inconsistencies in definitions in the UCI and WCI laws relating to travel expenses.

HB 812 will resolve the problems and allow both agencies to achieve the consistency and uniformity through the adoption of uniform regulations. We support that effort and HB 812. Thank you.

EXHIBIT 30

DATE 2/21/91

HB 812

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21 day of FEBRUARY, 1991.

Name: KEITH L. OLSON

Address: PO Box 1716

KALISPELL MT 59903

Telephone Number: 406-752-3168

Representing whom? MT. Logging Assn.

Appearing on which proposal?

HB 812

Do you: Support? ✓ Amend? Oppose?

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LABOR & EMPLOYMENT RELATIONS

COMMITTEE

BILL NO. HB 812

DATE 2/21/91

SPONSOR(S) Rep. David Wanzenried

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ben Hardman	Vh m truck Motor Carriers Assn	X	
Don Edwards	OCAW	X	
John Dwyer	State Bond	X	
Chuck Hunter	Dept. of Labor & Ind.	X	
Don Judge	MT ST AFL-CIO	X	
Dewey Hall	Bricklayers	X	
Largill	Int Self Interest Assoc	X	
Ernie Fenn	Int and St Bldg trade	X	
Bob Heiser	UFCW	X	
John Malee	M. F. T.	X	
Leon Stalcup	Mont Restaurant Assoc	X	
Magueline N. Carroll	Am. Gms. Assoc.	X	
John R. Olson	MT. Logging Assn	X	
Ed Muller	Dept Labor & Industry	X	

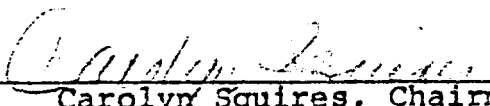
PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE STANDING COMMITTEE REPORT

February 22, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 812 (first reading copy -- white) do pass and be placed on consent calendar.

Signed: 

Carolyn Squires, Chairman

HEARING ON HOUSE BILL 812Presentation and Opening Statement by Sponsor:

Representative Dave Wanzenried told the Committee House Bill 812 provides legislative direction and legislative clarity as to wages for the benefit of employers and employees for computation of taxes for unemployment insurance and workers' compensation. He explained House Bill 812 grants the Department of Labor and Industry and the State Fund rule-making authority to establish the common definition for both workers' compensation and unemployment insurance.

Proponents' Testimony:

Keith Olson of the Montana Logging Association spoke in support of House Bill 812. He told the Committee a 1989 workers' compensation court decision put into question the historical method by which employers in the logging industry reimbursed their timber-fallers for what is termed "saw rent" or that allowance to timber-fallers who provide their own chain saws and transportation. He explained the unique nature of a timber-fallers duties necessitates and justifies the saw rent allowance. The workers' compensation decision implies the method of reimbursement must be changed to more accurately reflect each timber-fallers actual expenses. He commented the logging industry is prepared to do this. House Bill 812 is necessary in order to allow the department to promulgate industry specific rules which will satisfy the court.

Don Judge of the Montana State AFL-CIO told the Committee they had no opposition to House Bill 812.

Curt Laingen, representing the Montana Motor Carriers Association asked to go on record in favor of House Bill 812.

Chuck Hunter of the Montana Department of Labor and Industry told the Committee the bill gives clear authority to the department to exclude from the definition of wages those expenses that are employee reimbursements. He explained this will allow the department to continue with the practice of allowing those legitimate deductions. It gives the department the rule making authority to write rules for both unemployment insurance and workers' compensation regarding what constitutes wages. He urged support of House Bill 812.

Jim Murphy of the State Fund told the Committee the State Fund supports House Bill 812.

Bob Heiser of the United Food and Commercial Workers International Union asked to go on record in support of House Bill 812.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Lynch asked Representative Wanzenried if board is already exempted and if House Bill 812 includes meals. Representative Wanzenried stated that is true.

Senator Towe asked Representative Wanzenried how is it the premium or the benefits affected. Representative Wanzenried told the Committee it should not be affected at all. Informal policy in both areas is what will be done formally under rule making is granted in House Bill 812.

Closing by Sponsor:

Representative Wanzenried closed on House Bill 812.

EXECUTIVE ACTION ON HOUSE BILL 812

Motion:

Senator Keating moved House Bill 812 BE CONCURRED IN.

Discussion:

NONE.

Recommendation and Vote:

Motion to BE CONCURRED IN CARRIED UNANIMOUSLY. Senator Keating will carry House Bill 812 to the Senate.

HEARING ON HOUSE BILL 875

Presentation and Opening Statement by Sponsor:

Representative Tim Whalen told the Committee with the exception of Tom Schneider, no one on the Benefits Advisory Committee is from organized labor. House Bill 875 would allow representation on the committee from every labor organization with 1000 employees or more representing state employees. He explained the bill should not be necessary because 2-15-1016 provides the employee benefit advisory council must be selected from a diverse group to represent the interest of state employees and retirees.

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/14/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING			
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

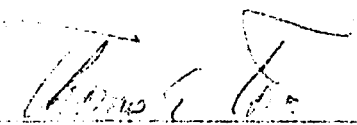
Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 812 (third reading copy - blue), respectfully report that House Bill No. 812 be concurred in.

Signed: 

Thomas E. Towe, Vice Chairman

144 3-15-91
And. Coord.

145 106
Sec. of Senate

HOUSE BILL NO. 812

INTRODUCED BY WANZENRIED, HARP, DRISCOLL, WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE CERTAIN EMPLOYEE EXPENSE REIMBURSEMENTS IN THE EXCLUSION FROM WAGES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION PURPOSES; AND AMENDING SECTIONS 39-51-201 AND 39-71-123, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. **General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another

state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30,

REFERENCE BILL

September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit

or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control

1 or direction over the performance of the services, both
2 under his contract and in fact; and

3 (b) is engaged in an independently established trade,
4 occupation, profession, or business.

5 (15) (a) "Institution of higher education", for the
6 purposes of this part, means an educational institution
7 which:

8 (i) admits as regular students only individuals having
9 a certificate of graduation from a high school or the
10 recognized equivalent of such a certificate;

11 (ii) is legally authorized in this state to provide a
12 program of education beyond high school;

13 (iii) provides an educational program for which it
14 awards a bachelor's or higher degree or provides a program
15 which is acceptable for full credit toward such a degree, a
16 program of postgraduate or postdoctoral studies, or a
17 program of training to prepare students for gainful
18 employment in a recognized occupation; and

19 (iv) is a public or other nonprofit institution.

20 (b) Notwithstanding any of the foregoing provisions of
21 this subsection, all colleges and universities in this state
22 are institutions of higher education for purposes of this
23 part.

24 (16) "State" includes, in addition to the states of the
25 United States of America, the District of Columbia, Puerto

1 Rico, the Virgin Islands, and the Dominion of Canada.

2 (17) "Unemployment insurance administration fund" means
3 the unemployment insurance administration fund established
4 by this chapter from which administrative expenses under
5 this chapter shall be paid.

6 (18) (a) "Wages" means all remuneration payable for
7 personal services, including commissions and bonuses, the
8 cash value of all remuneration payable in any medium other
9 than cash, and backpay received pursuant to a dispute
10 related to employment. The reasonable cash value of
11 remuneration payable in any medium other than cash shall be
12 estimated and determined in accordance with rules prescribed
13 by the department.

14 (b) The term "wages" does not include:

15 (i) the amount of any payment made by the employer, if
16 the payment was made under a plan established for the
17 employees in general or for a specific class or classes of
18 employees, to or on behalf of the employee for:

19 (A) retirement;

20 (B) sickness or accident disability, but in the case of
21 payments made by an employer directly to an employee, only
22 those payments made under a workers' compensation law are
23 excluded from "wages";

24 (C) medical and hospitalization expenses in connection
25 with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare officer; or

(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(20) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an

incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee ~~travel~~ expense reimbursements or allowances for meals, lodging, travel, and subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

1 (4) (a) For the purpose of calculating compensation
2 benefits for an employee working concurrent employments, the
3 average actual wages must be calculated as provided in
4 subsection (3).

5 (b) The compensation benefits for a covered volunteer
6 must be based on the average actual wages in his regular
7 employment, except self-employment as a sole proprietor or
8 partner who elected not to be covered, from which he is
9 disabled by the injury incurred.

10 (c) The compensation benefits for an employee working
11 at two or more concurrent remunerated employments must be
12 based on the aggregate of average actual wages of all
13 employments, except self-employment as a sole proprietor or
14 partner who elected not to be covered, from which the
15 employee is disabled by the injury incurred."

-End-